

# FEDERAL PUBLIC DEFENDER

Southern District of Florida

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December 12, 2024

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Clerk of Court  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth St., N.W.  
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RE: ***United States v. Haitham Yousef Alhindi*, no. 24-10595**  
Argued December 11, 2024 in Miami, Florida

Dear Mr. Smith:

During oral argument an issuer arose suggesting that dismissal of the indictment below per se deprived this Court over jurisdiction to rule on the validity of the order appealed from and the appeal was thus moot. Pursuant to Fed. R. App. P. 28(j), appellant, Mr. Alhindi, by and through undersigned counsel, hereby brings the following case to the attention of this Court:

***United States v. Villamonte-Marquez*, 462 U.S. 579 (1983).** A jury convicted the defendants on drug importation charges. On appeal, the conviction was vacated and reversed based on a Fourth Amendment violation. The government allowed the stay of the mandate to lapse and the appellate mandate issued. On remand, the government subsequently moved to dismiss the indictment. The district court granted the motion and dismissed the indictment. The defendants were deported. *Id.* at 594-595. The Supreme Court rejected the argument that the case had become moot based on the issuance of the mandate, the subsequent dismissal of the indictment on the government's own motion, and the government's deportation of the defendants. *Id.* at 589, n.2 Finding no Fourth Amendment violation, the Supreme Court reversed the judgment of the Court of Appeals. *Id.* at 592. The reversal served to reinstate the criminal judgment in the case that had been dismissed on the government's own motion.

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Here, Mr. Alhindi is still detained at Butner FMC based on the February 21, 2024 order of detention even though any release from detention is stayed because the government filed a § 4246 certificate in the EDNC. No subsequent order of detention has been entered and none would be authorized until the conclusion of the civil commitment proceedings. 18 U.S.C. § 4246(d). Under *Villamonte*, dismissal of the indictment does not prevent review of that order. If that order is invalidated by this Court, the government will be unable to prove that Mr. Alhindi was in 4241(d) custody when it filed the § 4246 certificate and the civil commitment proceeding will be terminated. *See United States v. Carrington*, 91 F.4th 252, 258-261 (4th Cir. 2024).

Respectfully Submitted,

s/ Bernardo Lopez

Bernardo Lopez  
Assistant Federal Public Defender  
Counsel for Appellant Alhindi

cc: Jorge Delgado, Assistant United States Attorney